

JUN-25-10 FRI 02:32 PM STURM & FIX LLP

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PTO/SB/65 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF
MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))**

Docket Number (Optional)

2-5127-012

JUL 02 2010

OFFICE OF PETITIONS

Mail to: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450
Fax: (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at
(571) 272-3282.

Patent Number: 6,408,979

Application Number: 09/525,365

Issue Date: 06/25/2002

Filing Date: 03/15/2000

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.368(c) and (d).

Also complete the following information, if applicable:

The above-identified patent:

☐

is a reissue of original Patent No. _____

original application number _____

original filing date _____

☐

resulted from the entry into the U.S. under 35 U.S.C. 371 of international application

_____ filed on _____

10/21/2011 CKHLOK 00000011 001650 6408979

01 FC:1551 1130.00 DA

02 FC:1554 150.00 DA

03 FC:1552 2050.00 DA

original issue date 400.00 DA

CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is

(1) being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 OR

(2) transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

06/25/2010

Date

Vicki J. Shepherd
Signature

Vicki J. Shepherd

Typed or printed name of person signing Certificate

Adjustment Date: 10/21/2011 CKHLOK

11/20/2010 DALLIN 00000014 001650 6408979

01 FC:1599

400.00 CR

(Page 1 of 4)

This collection of information is required by 37 CFR 1.378(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PAGE 2/30 * RCVD AT 6/25/2010 4:26:54 PM [Eastern Daylight Time] * SVR:USPTO-EF-XRF-6/26 * DNIS:2738300 * CSID:515 288 4860 * DURATION (mm:ss):08:00

Adjustment Date: 10/21/2011 CKHLOK
05/21/2009 DALLIN 00000022 001650 6408979
01 FC:1599 1110.00 CR

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1. SMALL ENTITY☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27**2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS**☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)**3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))**

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
<input type="checkbox"/> \$ _____	3 ½ yr fee	(1551)	<input type="checkbox"/> \$ _____	3 ½ yr fee	(2551)
<input checked="" type="checkbox"/> \$ 2,480.00	7 ½ yr fee	(1552)	<input type="checkbox"/> \$ _____	7 ½ yr fee	(2552)
<input type="checkbox"/> \$ _____	11 ½ yr fee	(1553)	<input type="checkbox"/> \$ _____	11 ½ yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED \$ 2,480.00

4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(1) of \$ 130.00 (Fee Code 1557) must be paid as a condition of accepting unavoidably delayed payment of the maintenance fee.

SURCHARGE FEE BEING SUBMITTED \$ 130.00

5. MANNER OF PAYMENT☐ Enclosed is a check for the sum of \$ _____☒ Please charge Deposit Account No. 08-1650 the sum of \$ 3,310.00☐ Payment by credit card. Form PTO-2038 is attached.**6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY**☒ The Director is hereby authorized to charge any maintenance fee, surcharge or petition fee deficiency to Deposit Account No. 08-1650

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7. OVERPAYMENT

As to any overpayment made, please

☒ Credit to Deposit Account No. 08-1850

OR

☐ Send refund check

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OFFICE OF PETITIONS

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

8. SHOWING

The enclosed statement will show that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The statement must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

9. PETITIONER(S) REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED.

/Michael O. Sturm/

06/25/2010

Signature(s) of Petitioner(s)

Date

Michael O. Sturm

26078

Typed or printed name(s)

Registration Number, if applicable

206 6th Ave - Suite 1213

515-288-9589

Address

Telephone Number

Des Moines, IA 50309-4076

Address

ENCLOSURES:

- ☒ Maintenance Fee Payment
☒ Statement why maintenance fee was not paid timely
☒ Surcharge under 37 CFR 1.20(i)(1) (fee for filing the maintenance fee petition)
☒ Other: Showing (Declaration)

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37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

/Michael O. Sturm/

06/25/10

Signature

Date

Michael O. Sturm

26078

Type or printed name

Registration Number, if applicable

STATEMENT

(In the space below, please provide the showing of unavoidable delay recited in paragraph 8 above.)

A Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b)) was initially filed May 7, 2009 with a Petition to Expedite with regard to the first (1st) maintenance fee due December 25, 2005. Also included with that filing were payment of the first (1st) maintenance fee in the amount of \$980; surcharge of \$130; petition fee of \$1,640; and petition to expedite fee of \$400, along with attachments consisting of Declarations and Exhibits.

Over the past several months, the PAIR system at the U.S. Patent and Trademark Office has been reviewed weekly (over 52 times) to determine the status of the Initial Petition. The Office of Petitions was called on April 26, 2010; April 28, 2010; June 23, 2010 and June 25, 2010 and messages left on the voicemail system of April Wise. On April 28, 2010, Ms. Wise returned the telephone call to legal assistant Vicki Shepherd. During the conversation, Vicki was informed by Ms. Wise that she had previously submitted her decision to her supervisor; and that it would be up to her supervisor to decide whether or not she agreed with Ms. Wise's assessment. She stated she had no idea when the supervisor would be acting on same. Ms. Wise then told Ms. Shepherd it could be beneficial for us to go ahead and attempt to pay the second (2nd) maintenance fee due December 25, 2009. She stated it would probably not be accepted because there was not yet a final decision on our Petition, but that we would at least have proof we had attempted to timely pay it. The second (2nd) maintenance fee was paid on April 28, 2010 (the same date as telephone conversation between Ms. Wise and Ms. Shepherd). On May 10, 2010, we received Notice of Non-Acceptance of Patent Maintenance Fee (receipt of payment on April 30, 2010), but it could not be accepted because "No decision has been made on petition" (Box 8, Other:), and signed by Shannon Harrison

As of today, June 25, 2010, we have still not received a decision on the initial Petition filed May 7, 2009. Because today is the final day for the second (2nd) maintenance fee to be paid with surcharge, this Petition is being filed anticipating that the second (2nd) maintenance fee will be accepted.

(Please attach additional sheets if additional space is needed)

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